RESOLUTION NO. 2014312

RE: AUTHORIZING CONDEMNATION PROCEEDING FOR ACQUISITION IN FEE AND FOR A TEMPORARY EASEMENT OF REAL PROPERTY OWNED BY EDWARD KREUTER FOR THE RESURFACING, RESTORATION AND REHABILTIATION OF NOXON ROAD, CR 21 BETWEEN NYS ROUTE 55 AND TITUSVILLE ROAD, CR 49, TOWN OF LAGRANGE (PIN 8755.41)

Legislators HUTCHINGS, MICCIO, and SAGLIANO offer the following and move its adoption:

WHEREAS, the Department of Public Works has proposed the improvement of a section of Noxon Road, CR 21, in the Town of LaGrange, which project (PIN#8755.41) includes the acquisition of portions of certain properties, and

WHEREAS, a short environmental assessment form and a Negative Declaration was approved and adopted by this Legislature on December 8, 2008 under Resolution No. 208403 and the Department of Public Works determined that the improvement project (1) constitutes an unlisted action pursuant to Article 8 of the Environmental Conservation Law and Part 617 of the NYCRR ("SEQRA"), and (2) will not have a significant effect on the environment, and

WHEREAS, it has been determined that a portion of property owned by Edward Kreuter is necessary to advance the rehabilitation of Noxon Road, CR 21, under a Federal Aid Project, and

WHEREAS, the Department of Public Works submitted a resolution seeking authorization for condemnation which was heard on September 4, 2014 at the Public Works and Capital Projects committee meeting, and

WHEREAS, Edward Kreuter spoke at that committee meeting, and

WHEREAS, after that committee meeting the Deputy Commissioner of Public Works and Edward Kreuter met and agreed to a revised compensation amount, and

WHEREAS, as a result of that meeting, Edward Kreuter executed a Purchase Agreement, and

WHEREAS, in order for the Department of Public Works to undertake its due diligence to obtain clear title to the fee acquisition, the Department of Public Works, through its consultant, contacted Edward Kreuter on numerous occasions requesting that he execute the necessary form so that the consultant could contact Edward Kreuter's lending institution and find out the lending institution's requirements for a Partial Release of Mortgage, and

WHEREAS, Edward Kreuter finally executed the form on or about November 4, 2014, which is approximately eight weeks after he signed the Purchase Agreement, and

WHEREAS, the project has been delayed due to Edward Kreuter's refusal to execute the form in a timely manner, and

WHEREAS, the Department of Public Works can no longer wait for Edward Kreuter to do what is necessary to provide the Department of Public Works with clear title, therefore, condemnation is necessary to advance the project, and

WHEREAS, the property to acquire in fee is 158.32 ± square meters (1,704.14± square feet) and a temporary easement of 887.66± square meters (9,554.69± square feet) located on Noxon Road, CR 21 in the Town of LaGrange as shown on Dutchess County Acquisition Map No. 54, Parcel No. 143 (fee acquisition) and Map No. 54, Parcel No. 112 (temporary easement), portions of Tax Grid No. 133400-6360-01-214557-0000, and

WHEREAS, authorization is requested to begin Eminent Domain Proceedings to acquire fee interest and temporary easement in a portion of property owned by Edward Kreuter for a total offer of compensation of $6,736.05 (rounded to $6,740.00) which includes $5,659.79 for fee acquisition and $1,076.26 for temporary easement, and

WHEREAS, it is now necessary for this Legislature to authorize the commencement of proceedings pursuant to the Eminent Domain Procedure Law for the acquisition of said property as follows:

Name	Map No.	Parcel Nos.	Square Meter	Proffered Amount
Edward Kreuter	54	143 (FEE)	158.32 ±	$ 5,659.79
	54	112 (TE)	887.66±	$1,076.26

now, therefore, be it

RESOLVED, that the Commissioner of Public Works on behalf of Dutchess County be and she hereby is authorized and empowered to commence proceedings pursuant to the Eminent Domain Procedure Law against Edward Kreuter for the fee acquisition and temporary easement of the above property in furtherance of the improvement of a section of Noxon Road, CR 21, in the Town of LaGrange, Dutchess County, New York, and it is further

RESOLVED, that the Commissioner of Public Works is authorized to spend up to Three Thousand and 00/100 ($3,000.00) Dollars in related expenses in connection with this condemnation proceeding.

CA-217-14 CAB/ca/R-0907-FFF
11/18/14 Fiscal Impact: See attached statement

STATE OF NEW YORK
ss:
COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 4th day of December 2014, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 4th day of December 2014.

CAROLYN MORRIS, CLERK OF THE LEGISLATURE

FISCAL IMPACT STATEMENT

☐ NO FISCAL IMPACT PROJECTED

APPROPRIATION RESOLUTIONS
(To be completed by requesting department)

Total Current Year Cost $ 9,740

Total Current Year Revenue and Source $ 9,253

Source of County Funds *(check one)*: ☑ Existing Appropriations, ☐ Contingency, ☐ Transfer of Existing Appropriations, ☐ Additional Appropriations, ☐ Other *(explain)*.

Identify Line Items(s):
H0290 5110 300(7)(9)

Related Expenses: Amount $ 3,000

Nature/Reason:
Anticipated Administrative Costs and Fees.

Anticipated Savings to County: $9,253

Net County Cost (this year): $487

Over Five Years:

Additional Comments/Explanation:
This fiscal impact statement pertains to the accompanying resolution request for authorization to commence Eminent Domain Proceedings to acquire in fee, a 158.32+/- square meter (1,704.14+/- square foot) parcel and a temporary easement to a 887.66+/- square meter (9,554.69+/- square foot) parcel for a total consideration of $6,740.00 from Edward Kreuter, Identified on Map 54 Parcels 112 and 143 in connection to the project Identified as PIN 8755.41,Rehabilitation of County Route 21(Noxon Road), NYS 55 to County Route 49 (Titusville Road), Town of Lagrange.

Related expenses in the amount of 3,000 are included in the Total Current Year Costs.

Prepared by: Matthew W. Davis EX. 2929

Dut.pdf

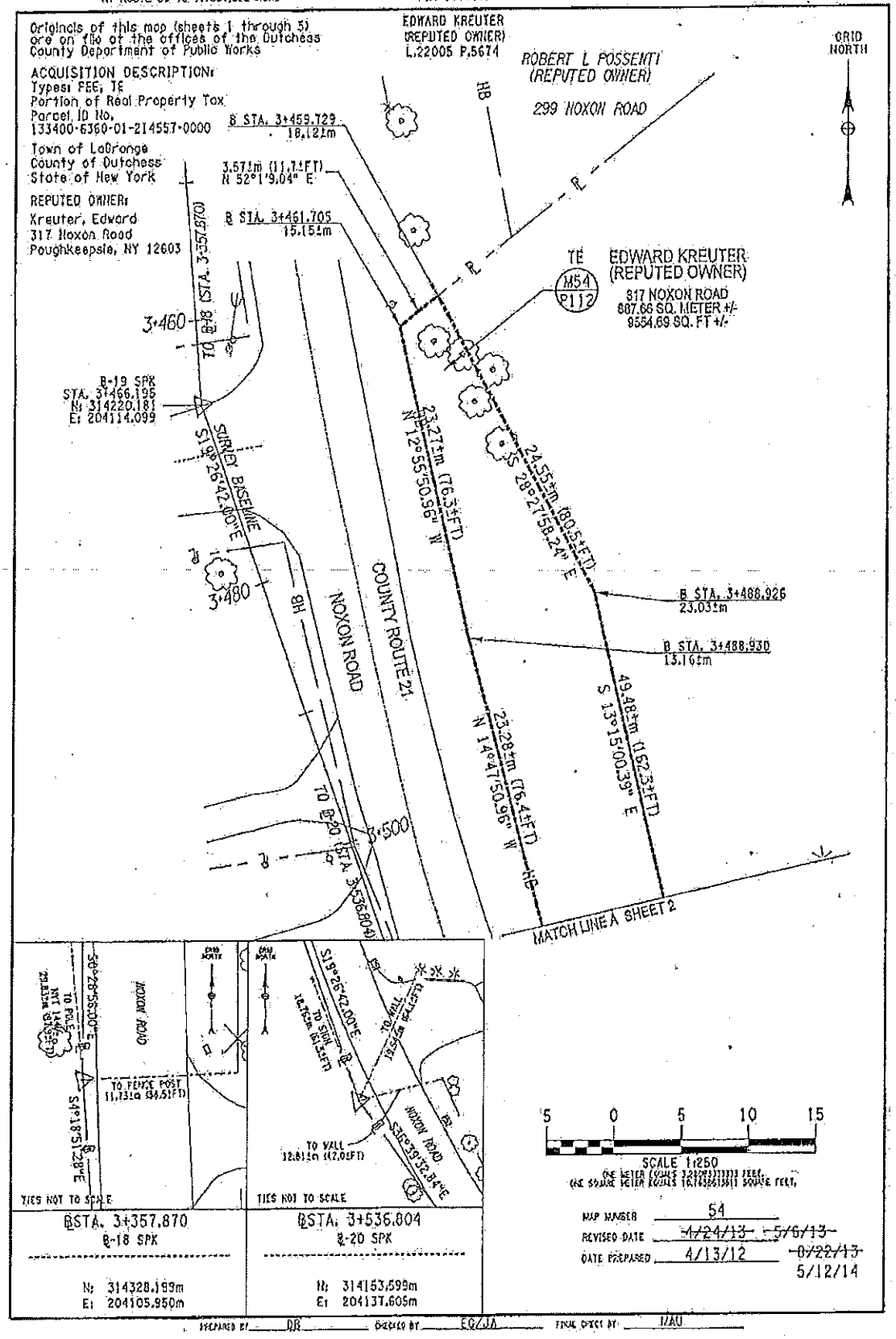
'EXHIBIT A'

COUNTY OF DUTCHESS
DEPARTMENT OF PUBLIC WORKS

MAP NO. 54
PARCEL NO. 112, 143
SHEET 1 OF 5

REHABILITATION OF NOXON ROAD
NY ROUTE 55 TO TITUSVILLE ROAD

PIN 8755.41



BSTA. 3+357.870	BSTA. 3+536.804
B-18 SPK	B-20 SPK
N: 314328.199m	N: 314153.599m
E: 204105.950m	E: 204137.605m

MAP NUMBER 54
REVISED DATE ~~4/24/13~~ ~~5/6/13~~
DATE PREPARED 4/13/12 ~~8/22/13~~ 5/12/14

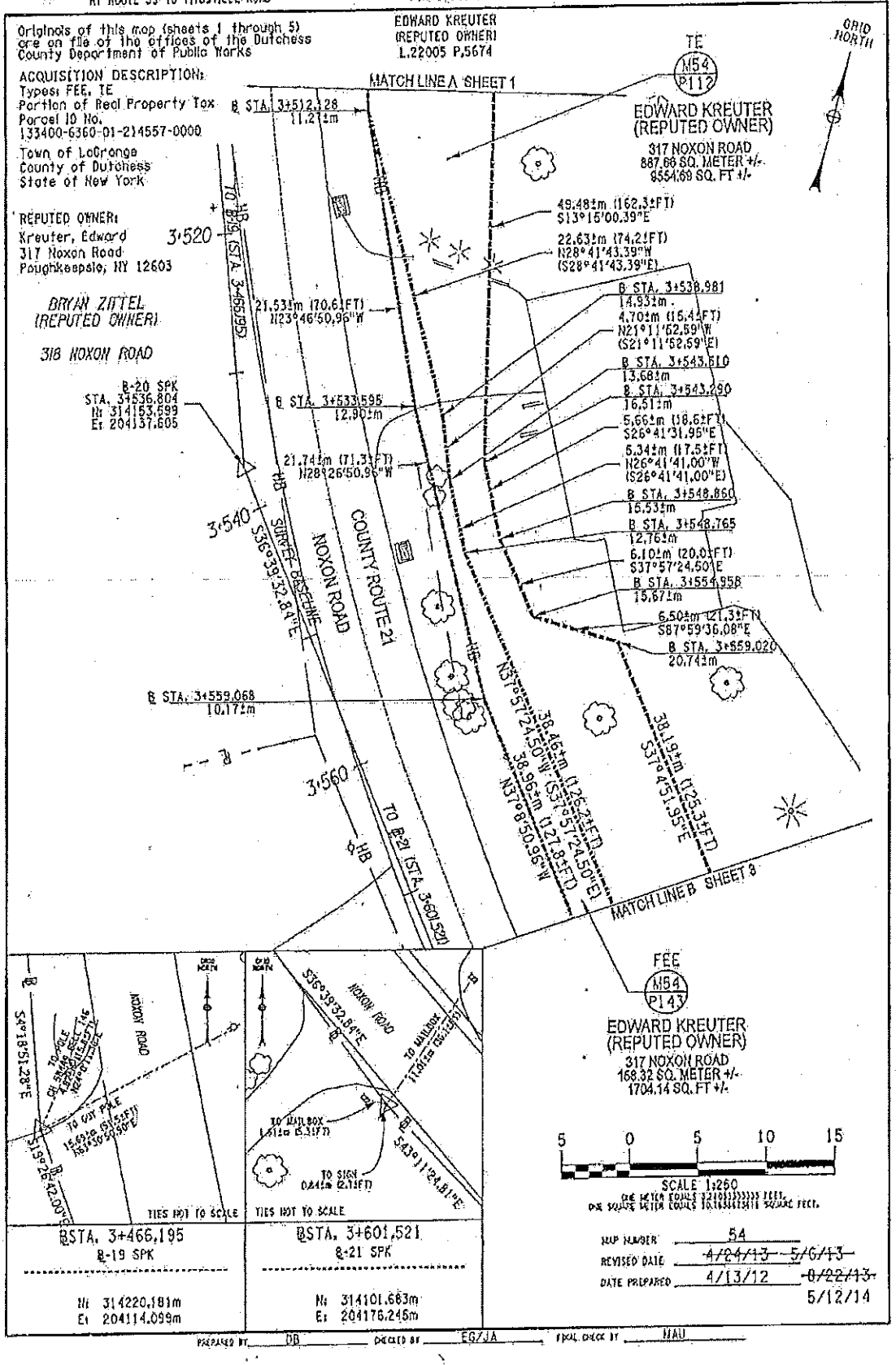
PREPARED BY DR CHECKED BY EG/JA FINAL CHECK BY MAU

'EXHIBIT A'
COUNTY OF DUTCHESS
DEPARTMENT OF PUBLIC WORKS

MAP NO. 54
PARCEL NO. 112, 143
SHEET 2 OF 5

REHABILITATION OF NOXON ROAD
NY ROUTE 55 TO TITUSVILLE ROAD

PIN 8755.41



MAP NUMBER 54
REVISED DATE ~~4/24/13~~ 5/6/13
DATE PREPARED 4/13/12 ~~8/22/13~~ 5/12/14

PREPARED BY DB CHECKED BY EG/JA FINAL CHECK BY MAU

'EXHIBIT A'

COUNTY OF DUTCHESS
DEPARTMENT OF PUBLIC WORKS

MAP NO. 54
PARCEL NO. 112, 143
SHEET 3 OF 5

REHABILITATION OF NOXON ROAD
NY ROUTE 55 TO TITUSVILLE ROAD

PIN 8755.41

Originals of this map (sheets 1 through 5) are on file at the offices of the Dutchess County Department of Public Works

EDWARD KREUTER
(REPUTED OWNER)
L.22005 P.5674

ACQUISITION DESCRIPTION:
Types: FEE, TE
Portion of Real Property Tax
Parcel ID No.
133400-6360-01-214557-0000
Town of LaGrange
County of Dutchess
State of New York

REPUTED OWNER:
Kreuter, Edward
317 Noxon Road
Poughkeepsie, NY 12603

EDWARD KREUTER
(REPUTED OWNER)
317 NOXON ROAD
156.32 SQ. METER +/-
1704.14 SQ. FT +/-
FEE
M54
P143

EDWARD KREUTER
(REPUTED OWNER)
317 NOXON ROAD
887.66 SQ. METER +/-
9554.69 SQ. FT +/-
TE
M54
P112

GRID NORTH

MATCH LINE B SHEET 2

HB 38.96±m (127.8±FT)
N37°8'50.95"W

38.46±m (126.2±FT)
N37°57'24.50"W
(S37°57'24.50"E)

B STA. 3+587.217
13.63±m

11.26±m (36.9±FT)
N 20°30'56.67" W
(S 20°30'56.87" E)

B STA. 3+597.211
21.02±m

10.56±m (34.6±FT)
S 48°53'9.04" W

B STA. 3+598.031
10.50±m

HB S36°39'32.84"E
SURVEY BASELINE
COUNTY ROUTE 21
NOXON ROAD
HB S43°11'24.81"E

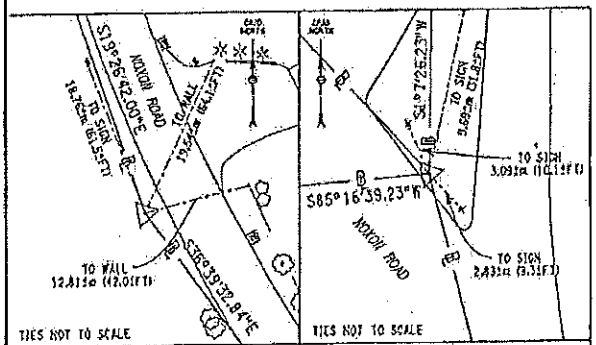
3+580
3+600

TO B-20 (STA. 3+536.804)
TO B-22 (STA. 3+744.283)

B-21 SPK STA. 3+601.521
N: 314101.683
E: 204176.245

JOHN T LOMBARDO AND
SHERRIE D LOMBARDO
(REPUTED OWNERS)

329 NOXON ROAD



℄STA. 3+536.804	℄STA. 3+744.283 (10+160.117)
B-20 SPK	B-22(13) PK
N: 314153.598m	N: 313997.597m
E: 204137.605m	E: 204273.954m

5 0 5 10 15
SCALE 1:250
ONE METER EQUALS 3.28083333333 FEET.
ONE SQUARE METER EQUALS 10.7639583611 SQUARE FEET.

MAP NUMBER 54
REVISED DATE ~~4/24/13~~ ~~5/6/13~~ ~~6/22/13~~ 5/12/14
DATE PREPARED 4/13/12

PREPARED BY DB CHECKED BY EG/JA FINAL CHECK BY DAU

'EXHIBIT A'

COUNTY OF DUTCHESS
DEPARTMENT OF PUBLIC WORKS

MAP NO. 54
PARCEL NO. 112, 143
SHEET 4 OF 5

REHABILITATION OF NOXON ROAD
NY ROUTE 55 TO TITUSVILLE ROAD

PIN 8755.41

Map of property which the Commissioner of Public Works deems necessary to be acquired in the name of the People of the County of Dutchess in fee acquisition and temporary easement for purposes connected with the highway system of the County of Dutchess, pursuant to Section 118 of the Highway Law and the Eminent Domain Procedure Law.

PARCEL NO. 143, A FEE ACQUISITION TO BE EXERCISED FOR THE PURPOSE OF THE WIDENING OF COUNTY ROUTE 21 (NOXON ROAD) FOR THE NOXON ROAD REHABILITATION PROJECT WITH IMPROVEMENTS INCLUDING, BUT NOT LIMITED TO THE FOLLOWING: AN EXISTING RETAINING WALL WILL BE REMOVED AND REPLACED WITH A NEW RETAINING WALL STRUCTURE, EXCAVATION ASSOCIATED WITH THE RETAINING WALL INSTALLATION INCLUDING ANY NECESSARY ROCK REMOVAL, CLEARING/GRUBBING OF THE SIDE SLOPE AS NEEDED AND THE PROPOSED GROUND SURFACE BEHIND THE NEW RETAINING WALL WILL BE GRADED AND SEEDED TO RE-ESTABLISH A GRASSED SURFACE; BOTH DRIVEWAYS WILL BE REHABILITATED TO MEET THE PROPOSED ROADWAY EDGE, AND TEMPORARY EROSION AND SEDIMENT CONTROL MEASURES WILL BE PLACED FOR THE DURATION OF THIS PROJECT, DESCRIBED AS FOLLOWS;

BEGINNING AT A POINT ON THE EASTERLY BOUNDARY OF COUNTY ROUTE 21 (NOXON ROAD), SAID POINT BEING DISTANT 11.27±m MEASURED AT RIGHT ANGLES FROM STATION 3+512.128± OF THE HEREINAFTER DESCRIBED SURVEY BASELINE FOR THE RECONSTRUCTION OF COUNTY ROUTE 21 (NOXON ROAD); THENCE THROUGH THE LANDS OF EDWARD KREUTER (REPUTED OWNER) SOUTH 28°41'43.39" EAST A DISTANCE OF 22.63±m (74.2±FT) TO A POINT, SAID POINT BEING DISTANT 14.93±m MEASURED AT RIGHT ANGLES FROM STATION 3+538.981± OF SAID BASELINE; THENCE CONTINUING SOUTH 21°11'52.59" EAST A DISTANCE OF 4.70±m (15.4±FT) TO A POINT, SAID POINT BEING DISTANT 13.68±m MEASURED AT RIGHT ANGLES FROM STATION 3+543.510± OF SAID BASELINE; THENCE CONTINUING THROUGH SAID LANDS SOUTH 26°41'41.00" EAST A DISTANCE OF 5.34±m (17.5±FT) TO A POINT, SAID POINT BEING DISTANT 12.76±m MEASURED AT RIGHT ANGLES FROM STATION 3+548.765± OF SAID BASELINE; THENCE CONTINUING THROUGH SAID LANDS SOUTH 31°57'24.50" EAST A DISTANCE OF 38.46±m (126.2±FT) TO A POINT, SAID POINT BEING DISTANT 13.63±m MEASURED AT RIGHT ANGLES FROM STATION 3+587.217± OF SAID BASELINE; THENCE CONTINUING THROUGH SAID LANDS SOUTH 20°30'56.87" EAST A DISTANCE OF 11.26±m (36.9±FT) TO A POINT, SAID POINT BEING DISTANT 10.50±m MEASURED AT RIGHT ANGLES FROM STATION 3+598.031±, SAID POINT ALSO BEING AT THE INTERSECTION OF THE EASTERLY BOUNDARY OF COUNTY ROUTE 21 (NOXON ROAD) AND THE DIVISION LINE OF LANDS OF EDWARD KREUTER (REPUTED OWNER) TO THE NORTH AND JOHN T LOMBARDO AND SHERRIE D LOMBARDO (REPUTED OWNERS) TO THE SOUTH; THENCE CONTINUING ALONG SAID BOUNDARY NORTH 37°8'50.96" WEST A DISTANCE OF 38.96±m (127.8±FT) TO A POINT, SAID POINT BEING DISTANT 10.17±m MEASURED AT RIGHT ANGLES FROM STATION 3+559.068± OF SAID BASELINE; THENCE CONTINUING ALONG SAID BOUNDARY NORTH 28°26'50.96" WEST A DISTANCE OF 21.74±m (71.3±FT) TO A POINT, SAID POINT BEING DISTANT 12.90±m MEASURED AT RIGHT ANGLES FROM STATION 3+533.595± OF SAID BASELINE; THENCE CONTINUING ALONG SAID BOUNDARY NORTH 23°46'50.96" WEST A DISTANCE OF 21.53±m (70.6±FT) TO THE POINT OF BEGINNING, SAID PARCEL BEING 158.32± SQUARE METERS (1704.14± SQUARE FEET) MORE OR LESS.

MAP NUMBER 54
REVISED DATE ~~4/24/13~~ ~~5/6/13~~
DATE PREPARED 4/13/12 ~~6/22/13~~ 5/12/14

PREPARED BY DB CHECKED BY EG/JA FINAL CHECK BY MAU

'EXHIBIT A'

COUNTY OF DUTCHESS
DEPARTMENT OF PUBLIC WORKS

MAP NO. 54
PARCEL NO. 112, 113
SHEET 5 OF 5

REHABILITATION OF NOXON ROAD
NY ROUTE 55 TO TITUSVILLE ROAD

PIN 8755.41

PARCEL NO. 112 A TEMPORARY EASEMENT TO BE EXERCISED FOR THE PURPOSE OF WORK AREA FOR CONSTRUCTION ACCESS AND STORAGE OF CONSTRUCTION MATERIALS RELATED TO A PROPOSED RETAINING WALL, EXCAVATION ASSOCIATED WITH THE RETAINING WALL INSTALLATION INCLUDING ANY NECESSARY ROCK REMOVAL, INSTALLATION OF A PERMANENT FENCE, CLEARING/GRUBBING AS NEEDED, TREE REMOVAL IF NECESSARY, GRADING BEHIND THE PROPOSED RETAINING WALL TO MEET EXISTING GROUND, SEEDING TO RE-ESTABLISH A GRASSED SURFACE, BOTH DRIVEWAYS WILL BE REHABILITATED TO MEET THE PROPOSED ROADWAY EDGE, AND THE PLACEMENT OF TEMPORARY EROSION AND SEDIMENT CONTROL MEASURES FOR THE DURATION OF THIS PROJECT, ALONG COUNTY ROUTE 21 (NOXON ROAD) FOR THE NOXON ROAD REHABILATATION PROJECT, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY BOUNDARY OF COUNTY ROUTE 21 (NOXON ROAD), SAID POINT ALSO BEING AT THE INTERSECTION OF THE DIVISION LINE OF LANDS OF EDWARD KREUTER (REPUTED OWNER) TO THE NORTH AND LANDS OF JOHN T LOMBARDO AND SHERRIE D LOMBARDO (REPUTED OWNERS), SAID POINT ALSO BEING DISTANT 10.50±m MEASURED AT RIGHT ANGLES FROM STATION 3+598.031± OF THE HEREINAFTER DESCRIBED SURVEY BASELINE FOR THE RECONSTRUCTION OF COUNTY ROUTE 21 (NOXON ROAD); THENCE THROUGH THE LANDS OF EDWARD KREUTER (REPUTED OWNER) NORTH 20°30'56.87" EAST A DISTANCE OF 11.26±m (36.9±FT) TO A POINT, SAID POINT BEING DISTANT 13.63±m MEASURED AT RIGHT ANGLES FROM STATION 3+587.217± OF SAID BASELINE; THENCE CONTINUING THROUGH SAID LANDS NORTH 37°57'24.50" WEST A DISTANCE OF 38.46±m (126.2±FT) TO A POINT, SAID POINT BEING DISTANT 12.76±m MEASURED AT RIGHT ANGLES FROM STATION 3+548.765± OF SAID BASELINE; THENCE CONTINUING THROUGH SAID LANDS NORTH 26°41'41.00" WEST A DISTANCE OF 5.34±m (17.5±FT) TO A POINT, SAID POINT BEING DISTANT 13.68±m MEASURED AT RIGHT ANGLES FROM STATION 3+543.510± OF SAID BASELINE; THENCE CONTINUING THROUGH SAID LANDS NORTH 21°11'52.59" WEST A DISTANCE OF 4.70±m (15.4±FT) TO A POINT, SAID POINT BEING DISTANT 14.93±m MEASURED AT RIGHT ANGLES FROM STATION 3+538.981± OF SAID BASELINE; THENCE CONTINUING THROUGH SAID LANDS NORTH 28°41'43.39" WEST A DISTANCE OF 22.63±m (74.2±FT) TO A POINT, SAID POINT BEING DISTANT 11.27±m MEASURED AT RIGHT ANGLES FROM STATION 3+512.128± OF SAID BASELINE, SAID POINT ALSO BEING ON THE EASTERLY BOUNDARY OF COUNTY ROUTE 21 (NOXON ROAD); THENCE CONTINUING ALONG SAID BOUNDARY NORTH 14°47'50.96" WEST A DISTANCE OF 23.28±m (76.4±FT) TO A POINT, SAID POINT BEING DISTANT 13.16±m MEASURED AT RIGHT ANGLES FROM STATION 3+488.930± OF SAID BASELINE, THENCE CONTINUING ALONG SAID BOUNDARY NORTH 12°55'50.96" WEST A DISTANCE OF 23.27±m (76.3±FT) TO A POINT, SAID POINT BEING DISTANT 15.15±m MEASURED AT RIGHT ANGLES FROM STATION 3+461.705± OF SAID BASELINE, SAID POINT ALSO BEING ON THE DIVISION LINE OF THE LANDS OF ROBERT L POSSENTI (REPUTED OWNER) TO THE NORTH AND THE LANDS OF EDWARD KREUTER (REPUTED OWNER) TO THE SOUTH; THENCE CONTINUING ALONG SAID DIVISION LINE NORTH 52°1'9.04" EAST A DISTANCE OF 3.57±m (11.7±FT) TO A POINT, SAID POINT BEING DISTANT 18.12±m MEASURED AT RIGHT ANGLES FROM STATION 3+459.729± OF SAID BASELINE; THENCE CONTINUING THROUGH THE LANDS OF EDWARD KREUTER (REPUTED OWNER) SOUTH 28°27'58.24" EAST A DISTANCE OF 24.55±m (80.5±FT) TO A POINT, SAID POINT BEING DISTANT 23.03±m MEASURED AT RIGHT ANGLES FROM STATION 3+488.926± OF SAID BASELINE; THENCE CONTINUING THROUGH SAID LANDS SOUTH 13°15'00.39" EAST A DISTANCE OF 49.48±m (162.3±FT) TO A POINT, SAID POINT BEING DISTANT 16.51±m MEASURED AT RIGHT ANGLES FROM STATION 3+543.290± OF SAID BASELINE; THENCE CONTINUING THROUGH SAID LANDS SOUTH 26°41'31.95" EAST A DISTANCE OF 5.66±m (18.6±FT) TO A POINT, SAID POINT BEING DISTANT 15.63±m MEASURED AT RIGHT ANGLES FROM STATION 3+548.860± OF SAID BASELINE; THENCE CONTINUING THROUGH SAID LANDS SOUTH 37°57'24.50" EAST A DISTANCE OF 6.10±m (20.0±FT) TO A POINT, SAID POINT BEING DISTANT 15.67±m MEASURED AT RIGHT ANGLES FROM STATION 3+554.958± OF SAID BASELINE; THENCE CONTINUING THROUGH SAID LANDS SOUTH 87°59'36.08" EAST A DISTANCE OF 6.50±m (21.3±FT) TO A POINT, SAID POINT BEING DISTANT 20.74±m MEASURED AT RIGHT ANGLES FROM STATION 3+559.020± OF SAID BASELINE; THENCE CONTINUING THROUGH SAID LANDS SOUTH 37°04'51.95" EAST A DISTANCE OF 38.19±m (125.3±FT) TO A POINT, SAID POINT BEING ON THE DIVISION LINE OF LANDS OF EDWARD KREUTER (REPUTED OWNER) TO THE NORTH AND LANDS OF JOHN T LOMBARDO AND SHERRIE D LOMBARDO (REPUTED OWNERS) TO THE SOUTH, SAID POINT ALSO BEING DISTANT 21.02±m MEASURED AT RIGHT ANGLES FROM STATION 3+597.211± OF SAID BASELINE; THENCE CONTINUING ALONG SAID DIVISION LINE SOUTH 48°53'9.04" WEST A DISTANCE OF 10.56±m (34.6±FT) TO THE POINT OF BEGINNING, SAID PARCEL BEING 887.66± SQUARE METERS (9554.69± SQUARE FEET) MORE OR LESS.

RESERVING, HOWEVER, TO THE OWNER OF ANY RIGHT, TITLE OR INTEREST IN AND TO THE PROPERTY DESCRIBED ABOVE AS PARCEL NO. 112 AND SUCH OWNER'S SUCCESSORS OR ASSIGNS, THE RIGHTS OF ACCESS AND THE RIGHT OF USING SAID PROPERTY AND SUCH USE SHALL NOT BE FURTHER LIMITED OR RESTRICTED UNDER THIS EASEMENT BEYOND THAT WHICH IS NECESSARY TO EFFECTUATE ITS PURPOSES FOR, AND AS ESTABLISHED BY, THE CONSTRUCTION AND AS SO CONSTRUCTED, THE MAINTENANCE, OF THE HEREIN IDENTIFIED PROJECT.

THE SURVEY BASELINE IS A PORTION OF THE 2006 SURVEY BASELINE FOR THE RE-CONSTRUCTION OF COUNTY ROUTE 21 (NOXON ROAD), AS SHOWN ON THE MAP AND DESCRIBED AS FOLLOWS:

BEGINNING AT STATION 3+357.870; THENCE SOUTH 4°18'51.28" EAST TO STATION 3+466.195; THENCE SOUTH 19°26'42.00" EAST TO STATION 3+536.804; THENCE SOUTH 36°39'32.84" EAST TO STATION 3+601.521; THENCE SOUTH 43°11'24.81" EAST TO STATION 3+744.283.

I hereby certify that the property mapped above is necessary for this project; and the acquisition thereof is recommended.

Date 5/16 20 14

Noel H.S. Knille, AIA, ASLA
Commissioner of Public Works

Recommended by:

Date 5/15/14 20

Robert H. Bolkind, P.E.
Deputy Commissioner of Public Works

MAP NUMBER 54
REVISED DATE ~~4/24/13~~ 5/6/13
DATE PREPARED 4/13/12 ~~8/22/13~~ 5/12/14

"Unauthorized alteration of a survey map bearing a licensed land surveyor's seal is a violation of the New York State Education Law."

I hereby certify that this map is on accurate description and map made from an accurate survey, prepared under my direction.

Date MAY 13 20 14

GARY M. REED Land Surveyor
P.L.S. License No. 50557

WSP- SELLS
555 PLEASANTVILLE ROAD
BRIARCLIFF MANOR, NY 10510

STATE OF NEW YORK
GARY M. REED
050557
LICENSED LAND SURVEYOR

PREPARED BY: DB CHECKED BY: EG/JA FINAL CHECK BY: MAH

Public Works and Capital Projects

RESOLUTION NO. 208403

RE: ENVIRONMENTAL FINDINGS FOR THE RESURFACING, RESTORATION AND REHABILITATION OF APPROXIMATELY 2.91 KILOMETERS (1.8 miles ±) OF NOXON ROAD (CR 21) BETWEEN NYS ROUTE 55 AND TITUSVILLE ROAD (CR 49) (PIN 8755.41) AND THE REHABILITATION OF THE NOXON ROAD/TITUSVILLE RD. INTERSECTION (PIN 8758.69) WITHIN THE TOWN OF LAGRANGE, DUTCHESS COUNTY NEW YORK

Legislators KELLER-COFFEY, MANSFIELD, McCABE, and SEARS offer the following and move its adoption:

WHEREAS, Dutchess County has established itself as Lead Agency in a companion resolution in accordance with 6 NYCRR 617.6, and

WHEREAS, the Department of Public Works as has prepared a Full Environmental Assessment Form (EAF) in connection the resurfacing, restoration and rehabilitation of approximately 2.91 kilometers (1.8 miles ±) of Noxon Rd. (CR 21) between NYS Route 55 and Titusville Rd. (CR 49) and as a result has found no significant impacts on the environment would potentially occur as a result of this project, and

WHEREAS, a true copy of the EAF and Negative Declaration are annexed hereto, and

WHEREAS, the Department of Public Works has determined that the rehabilitation of the Noxon Rd./Titusville Rd. intersection is a Type II action under the State Environmental Quality Review Act (SEQRA) and that no further action is required, and

WHEREAS, it is the purpose of this Legislature in adopting this resolution, to adopt and confirm the findings of the Department of Public Works, now therefore, be it

RESOLVED, that the Legislature approves and adopts the attached Negative Declaration for the resurfacing, restoration and rehabilitation of approximately 2.91 kilometers (1.8 miles ±) of Noxon Rd. (CR 21) between NYS Route 55 and Titusville Rd. (CR 49) in accordance with 6 NYCRR 617.6, including the acquisition of portions of certain properties in the Town of LaGrange, and be it further

RESOLVED, the attached Negative Declaration is to be filed and published in accordance with 6 NYCRR 617.12.

CA-231-08 CAB/ca/G-1461 11/14/08 Fiscal Impact: See attached Statement

APPROVED

WILLIAM R. STEINHAUS
COUNTY EXECUTIVE

Date December 17, 2008

STATE OF NEW YORK
ss:
COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess, have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 8th day of December, 2008, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 8th day of December, 2008.

BARBARA HUGO, CLERK OF THE LEGISLATURE

McKinney's Consolidated Laws of New York Annotated
Environmental Conservation Law (Refs & Annos)
Chapter 43-B. Of the Consolidated Laws (Refs & Annos)
Article 8. Environmental Quality Review (Refs & Annos)

McKinney's ECL § 8-0111

§ 8-0111. Coordination of reporting; limitations; lead agency

Effective: August 4, 2011
Currentness

1. State and federal reports coordinated. Where an agency as herein defined directly or indirectly participates in the preparation of or prepares a statement or submits material relating to a statement prepared pursuant to the requirements of the National Environmental Policy Act of 1969, [1] whether by itself or by another person or firm, compliance with this article shall be coordinated with and made in conjunction with federal requirements in a single environmental reporting procedure.

2. Federal report. Where the agency does not participate, as above defined, in the preparation of the federal environmental impact statement or in preparation or submission of materials relating thereto, no further report under this article is required and the federal environmental impact statement, duly prepared, shall suffice for the purpose of this article.

3. State and local coordination. Necessary compliance by state or local agencies with the requirements of this article shall be coordinated in accordance with section 8-0107 and with other requirements of law in the interests of expedited proceedings and prompt review.

4. Effective date of coordinated reporting. The requirements of the section with regard to coordinated preparation of federal and state impact materials and reporting shall not apply to statements prepared and filed prior to the effective date of this article. [2]

5. Exclusions. The requirements of this article shall not apply to:

(a) Actions undertaken or approved prior to the effective date of this article [2], except:

(i) In the case of an action where it is still practicable either to modify the action in such a way as to mitigate potentially adverse environmental effects or to choose a feasible and less environmentally damaging alternative, in which case the commissioner may, at the request of any person or on his own motion, in a particular case, or generally in one or more classes of cases specified in rules and regulations, require the preparation of an environmental impact statement pursuant to this article; or

(ii) In the case of an action where the responsible agency proposes a modification of the action and the modification may result in a significant adverse effect on the environment, in which case an environmental impact statement shall be prepared with respect to such modification.

(b) Actions subject to the provisions requiring a certificate of environmental compatibility and public need in articles seven, ten and the former article eight of the public service law; or

(c) Actions subject to the class A or class B regional project jurisdiction of the Adirondack park agency or a local government pursuant to section eight hundred seven, eight hundred eight or eight hundred nine of the executive law, except class B regional projects subject to review by local government pursuant to section eight hundred seven of the executive law located within the Lake George park as defined by subdivision one of section 43-0103 of this chapter.

6. Lead Agency. When an action is to be carried out or approved by two or more agencies, the determination of whether the action may have a significant effect on the environment shall be made by the lead agency having principal responsibility for carrying out or approving such action and such agency shall prepare, or cause to be prepared by contract or otherwise, the environmental impact statement for the action if such a statement is required by this article. In the event that there is a question as to which is the lead agency, any agency may submit the question to the commissioner and the commissioner shall designate the lead agency, giving due consideration to the capacity of such agency to fulfill adequately the requirements of this article.

Credits

(Added L.1975, c. 612, § 1. Amended L.1977, c. 252, § 4; L.1981, c. 119, § 1; L.1987, c. 617, § 9; L.1992, c. 519, § 8; L.2011, c. 388, § 13, eff. Aug. 4, 2011.)

Editors' Notes

SUPPLEMENTARY PRACTICE COMMENTARIES

by Kevin A. Reilly

2012

A regular commentator on New York environmental law draws attention to competing drives in Albany seeking to shift SEQRA responsibility from local actors to state actors and, conversely, to solidify local control over local land use and its environmental review requirements (Charlotte A. Biblow, "Is State Poised to Take SEQRA Decisions Away From Local Governments?" New York Law Journal, May 24, 2012, p. 3). She reports an initiative by the Long Island Regional Economic Development Council that seeks greater state control in a lead agency capacity over "regionally significant projects," to fast track "transformative" projects that ostensibly pose no environmental threats, which, it is said, often get sidetracked by local boards, sometimes acting under the influence of small numbers of vocal opponents to development. The article reports that local leaders of both parties have moved to blunt such a shift of power away from the traditional land use boards, whereas business publications have argued that local politics too often defeats viable, and economically valuable, development projects. In any event, the article, which illustrates how some Long Island land use battles have played out, alerts readers to bills in the Assembly (A.09541) and Senate (S. 6525) which propose measures to keep SEQRA reviews for local land use decisions local, where, in fact, the impact of development is most forcefully experienced, for better or for worse.

2009

C8-0111: Coordination of reporting, limitations, lead agency

Excluded actions

The Main Practice Commentary notes that subdivision 5 recognizes some carry-over provisions from pre-SEQRA statutory law by, inter alia, exempting the Adirondack Park Agency, under specified circumstances, from the obligation to prepare an EIS under ECL 8-0109. The exclusion arose in what facially appeared to be a challenge to a town's rezoning of 6,000 Adirondack Park acres in *Association for the Protection of the Adirondacks v. Town Board of the Town of Tupperlake,* ___ A.D.3d ___, ___ N.Y.S.2d ___, 2009 N.Y. Slip Op 5659 [3d Dept. 2009], but, more accurately, the challenge was an endeavor to scuttle the possible approval of the development of a resort by the APA. The APA, vested by the Executive Law with land use authority within the Adirondack Park, classified the proposed development as a class A regional project. That finding brought further decision making within the reach of the exemption in ECL 8-0111(5)(c), meaning that the APA, and not the Town, having assumed statutory authority, controlled the environmental review, but that it was exempt from SEQRA's EIS requirements. However, the APA declined to act further on the developer's application unless the zoning applicable to the area permitted the proposed commercial development. Hence, the developer applied to the Town for rezoning, which was granted, with certain caveats that provided for a reversion to the former zoning should the APA not approve the application. Upon the challenge to the rezoning by local citizens, though, the Court declined to subject that action to SEQRA's EIS requirements. The court found that the rezoning was only a preliminary step in the much larger process of addressing the application for the development of a resort, a matter residing with the APA, and not the Town. Hence, the rezoning issue was judicially bootstrapped to the APA exclusion in ECL 8-0111(5)(c), thus avoiding the EIS requirements of ECL 8-0109. That did not mean that an environmental review would be abrogated, though, especially in view of APA's own rigorous environmental requirements. The majority, interestingly, wrote further than was necessary on these facts and concluded that SEQRA--as distinct from only its EIS requirements--was inapplicable to APA class A regional projects, a conclusion challenged by the concurring opinion and thus echoing the Main Practice Commentary (at page 351).

by Philip Weinberg

2007

Lead Agencies

A court has ruled a city planning board the proper lead agency for a mega-store project in *Citizens Against Sprawl-Mart v. City of Niagara Falls*, 35 A.D.3d 1190, 827 N.Y.S.2d 803 (4th Dept. 2006), leave to appeal denied, 38 A.D.3d 1370, 831 N.Y.S.2d 91 (4th Dept. 2007). It rebuffed the petitioners' argument that the city council should have been the lead agency since the project involved a zoning amendment. But, the court noted, had the council conducted SEQRA review of the zoning change it would have improperly segmented review of the action (see the discussion in the Main Commentary to ECL § 8-0109 at C8-0109:3 under Segmentation).

Excluded Actions

Following the *Niagara Mohawk* decision discussed in the Main Commentary, the court in *Eastern Niagara Project Power Alliance v. New York State DEC*, 42 A.D.3d 857, 840 N.Y.S. 2d 225 (3d Dept. 2007), reaffirmed SEQRA's inapplicability to certification of water quality under Clean Water Act § 401. Other aspects of this decision are described in this year's Commentary to ECL §§ 17-0823 and 70-0119.

2006

Lead Agencies

In concert with *Coca-Cola*, *Glen Head* and other decisions described in the Main Commentary, a court has ruled Nassau County could not select its planning commission as lead agency for an extensive project involving moving, building and renovating several courthouses and other government structures when the actual plan had been prepared by the county legislature and was to be implemented by its office of real estate and development. *Inc. Village of Mineola v. County of Nassau*, ___ Misc. 3d ___, ___ N.Y.S.2d ___, N.Y.L.J. March 28, 2006, p. 19, col. 1 (Sup. Ct. Nassau Co. 2006). The effect of this maneuver was, as the court noted, to have "insulated the Legislature from review of the environmental impacts of the Plan, and ensured that the Legislature was only required to 'rubber stamp' the Plan." This is precisely what SEQRA was designed to prevent.

The City of New York Department of Sanitation and DEC agreed in 1992 to be co-lead agencies regarding permits for certain solid waste facilities in the City. However, DEC ruled that the agreement, applicable to transfer stations and recyclables handling and recovery facilities, does not cover a composting facility. See the *Spring Creek* decision, described in this year's Commentary to ECL § 27-0707. *East Bay Recycling Inc. v. Cahill*, discussed in this year's commentary to ECL § 8-0109 at C8-0109:6, under Scope of Review, also deals with the co-lead agency issue.

PRACTICE COMMENTARIES

by Philip Weinberg

This section deals with two recurring and troublesome problems: the overlapping requirements of the National Environmental Policy Act (NEPA), 42 U.S.C.A. §§ 4321 to 4370d, and SEQRA; and the selection of a lead agency with responsibility to prepare an EIS under SEQRA when two or more state or local bodies are involved. It also enumerates some actions explicitly excluded from SEQRA.

NEPA and SEQRA

In many instances a project is subject to both NEPA and SEQRA -- for example, a federally-funded highway or housing development, or construction along a waterway requiring a dredge-and-fill permit under the Clean Water Act, 33 U.S.C.A. § 1344. Yet to impose two separate environmental impact statement processes would amount to an environmental version of cruel and unusual punishment. This section (subd. 1) provides for a single coordinated environmental reporting procedure where a state or local agency participates in preparing, or comments on, an EIS pursuant to NEPA. Where a state or local agency does not take part in the NEPA EIS, subd. 2 as originally enacted required it to supplement the NEPA EIS by adding material on the land use or energy-use aspects of the proposed action, if applicable -- two items explicitly required in an EIS under § 8-0109(2)(g) and (h).

A 1977 amendment excised this requirement to supplement the federal EIS, as Governor Carey noted in approving the bill, in order to make SEQRA "less burdensome." See McKinney's 1977 Sess.Laws, p. 2492. Now, whether or not the state or local agency took part in the NEPA process, complying with NEPA satisfies SEQRA's EIS requirement as well. But the other requirements of SEQRA still apply, including findings where necessary (see the Commentary to § 8-0109 at C8-0109:2).

Lead Agencies

Subdivision 3, requiring state and local agencies to coordinate their compliance with SEQRA, should be read in conjunction with subd. 6, dealing with the vexing issue of the "lead agency." Often more than one state or local agency will be involved in an action. For example, a development may require a town zoning change as well as one or more

Department of Environmental Conservation permits. In such a case it is vital for the agencies to agree which will be the lead agency, responsible for preparing the environmental assessment and, if needed, the EIS. As subd. 4 provides, this decision should be made as early as possible in the process. Here too the 6 NYCRR Part 617 regulations serve as a road map. They provide that the lead agency should be agreed to among those involved. § 617.6(b)(2). If the agencies cannot agree on a lead agency the Department of Environmental Conservation may select one on the basis of whether the impact of the project is chiefly local, regional or statewide, and which agency can best investigate and assess those impacts. § 617.6(b)(5)(v). The criteria for agreeing to a lead agency are not spelled out in the regulations but are presumably the same. See Gerrard *et al., Environmental Impact Review in New York* (LexisNexis), § 3.03(1)(a).

In certain unlisted actions each involved agency may independently assess environmental impact. An agency may decide to be the lead agency and remain so if no other objects. Objections are dealt with as with a Type I action. See § 617.6(b)(4).

Which agency becomes the lead agency is a vital issue for the practitioner since that agency calls the tune to which the others must dance.

In DEC Declaratory Ruling 8-01 (Martin S. Baker, *et al.*) (1984), the Department ruled that a municipality may not delegate to an agency without decision-making power the role of permanent lead agency. This ruling follows the decisions in *Glen Head-Glenwood Landing Civic Council, Inc. v. Town of Oyster Bay*, 88 A.D.2d 484, 453 N.Y.S.2d 732 (2nd Dept. 1982) and *Save the Pine Bush, Inc. v. Planning Bd. of City of Albany*, 96 A.D.2d 986, 466 N.Y.S.2d 828 (3rd Dept.), appeal dismissed 61 N.Y.2d 668, 472 N.Y.S.2d 89, 460 N.E.2d 230, leave to appeal denied 61 N.Y.2d 602, 472 N.Y.S.2d 1025, 460 N.E.2d 231 (1983). In both those cases a municipality sloughed off on its environmental advisory board the function of preparing EISs, although that agency lacked the authority to render land-use decisions. The courts held SEQRA responsibility must remain where decision-making power rests. To hold otherwise would surely subvert a chief purpose of SEQRA -- to ensure that those making decisions with environmental consequences themselves weigh those consequences. Municipal officials may not do the bureaucratic equivalent of Groucho Marx telling his butler, "Go run around the park; I need the exercise."

Those who fail to learn from history are, says the adage, doomed to repeat it, and the City of New York, having not learned the lesson of *Glen Head* and *Save the Pine Bush*, paid the price in *Coca-Cola Bottling Co. of New York v. Board of Estimate of City of New York*, 72 N.Y.2d 674, 536 N.Y.S.2d 33, 532 N.E.2d 1261 (1988). The Court of Appeals there invalidated the City's practice of shunting environmental review to its departments of environmental protection and city planning in a case where the relevant decision, authorizing the sale of city-owned land, was to be made by the former Board of Estimate. Neither of the two agencies that performed the environmental review was the responsible decision-making agency, the court noted. The Court roundly criticized the City for "transgress[ing] SEQRA's spirit, as well as its form," by "allow[ing] the Board of Estimate -- the governmental entity responsible for the final policy decision to proceed with a project -- to be insulated from consideration of environmental factors." 72 N.Y.2d at 681-82.

In 1991 the City of New York revised its rules implementing SEQRA, known as the City Environmental Quality Review (CEQR) rules. The rules provide, in keeping with the *Coca-Cola* case, that the City agency with actual responsibility for the action be the lead agency under SEQRA. See CEQR § 5-03. The City Charter adopted in 1989 abolished the Board of Estimate, an agency with land-use and other jurisdiction consisting of the mayor, two other city-wide officials and the five borough presidents. The Board's land-use responsibilities are now vested in the City Council. The rules reflect these changes.

The City now has an Office of Environmental Coordination, also created by the new Charter (§ 192[e]), designed to assist city agencies in complying with SEQRA. It is clear that this office, under *Coca-Cola*, may not itself be a

lead agency, since it lacks responsibility for projects. SEQRA places responsibility on the sponsoring or permitting agency -- a responsibility that agency may not delegate.

As in the *Coca-Cola* case, the court condemned the practice of foisting environmental quality review onto an agency which lacks decision-making power in *Martin v. Koppelman*, 124 A.D.2d 24, 510 N.Y.S.2d 881 (2nd Dept. 1987). The Appellate Division there annulled resolutions of the Suffolk County Legislature that were based on negative declarations adopted by the county's Council on Environmental Quality. The resolutions authorized appropriating funds to expand parking facilities at several railroad stations as part of an electrification project. The court held that, just as in the *Glen Head* case, the county legislature had improperly delegated SEQRA authority to an agency without the power to make the actual decisions on the land use in question. The county's attempt to fund parking areas along the electrified railroad line without proper environmental review was unplugged.

The appellate division reminded us once again that a lead agency must itself weigh a project's environmental impacts. In *Penfield Panorama Area Community, Inc. v. Town of Penfield Planning Bd.*, 253 A.D.2d 342, 688 N.Y.S.2d 848 (4th Dept. 1999), the planning board approved a subdivision including two apartment houses on condition that the developer obtain a site remediation plan that met the approval of DEC and the county health department. But the board's EIS, though it acknowledged that hazardous waste deposited on the site was one of the board's "primary areas of concern," failed to further concern itself with the issue. As the court held, a lead agency may not blithely identify, then waltz away from, a serious environmental impact. The town was obliged to genuinely consider the presence of the hazardous waste before authorizing residential construction on the site, and to minimize its impacts (see ECL § 8-0109[1], [8] and the Commentary at C8-0109:2). Simply advising the developer to seek some answers from other agencies, while allowing the development to proceed, vitiates both the letter and spirit of SEQRA.

Suppose a town authority seeks a permit from DEC to build a solid waste incinerator. DEC agreed to the authority's designation as lead agency. In *Residents for a More Beautiful Port Washington, Inc. v. Department of Environmental Conservation of State of N.Y.*, 153 A.D.2d 746, 545 N.Y.S.2d 306 (2nd Dept. 1989), leave to appeal denied 75 N.Y.2d 703, 552 N.Y.S.2d 108, 551 N.E.2d 601, the court held DEC's determination that the authority was a proper lead agency to be a rational one. Even though, as the opponents of the project argued, the plant would have regional environmental impacts, the court agreed that its major impacts would be local, so that the town authority was a rational lead agency. And, in *Young v. Board of Trustees of Village of Blasdell*, 221 A.D.2d 975, 634 N.Y.S.2d 605 (4th Dept. 1995), the court, after dismissing a proceeding to review a village board's negative declaration for a solid waste transfer station, went on to state "[i]n the interest of judicial economy" that the village was not a proper lead agency. A lead agency, under DEC's Part 617 SEQRA rules, must be an "involved agency," meaning one with jurisdiction to fund, approve or undertake the action. 6 NYCRR § 617.2(u). Since it was DEC, not the village, that had authority to permit the transfer station, the village was not a proper lead agency. The village had leased property to the transfer station's operator, and a lease is one of the forms of "approval" as defined in the regulations at § 617.2(e). But, the court noted, the lease had been entered into months before the village named itself lead agency. The village was presumably not an involved agency any longer once it executed the lease.

Gordon v. Rush, 100 N.Y.2d 236, 762 N.Y.S.2d 18, 792 N.E.2d 168 (2003), held that once a lead agency has issued a negative declaration, an involved agency may not conduct its own SEQRA review. The petitioners sought permits from the town to build bulkheads to protect their land from coastal erosion. They also needed tidal wetlands permits from DEC, which became lead agency with the town's consent, and issued a negative declaration. But the town's coastal erosion hazard area board of review then directed an EIS. Too late, the Court of Appeals ruled; the board was bound by DEC's negative declaration. The board "had notice of these matters and failed to advise the DEC of any relevant concerns, as it should have done pursuant to the SEQRA regulations," see 6 NYCRR § 617.3(e). Agencies may not subvert SEQRA to so alter the rules in mid-game.

Suppose a lead agency's EIS contains findings recommending that DEC issue a freshwater wetlands permit under ECL article 24 subject to conditions set forth in the EIS? Must DEC -- an involved agency although not the lead agency -- consider the EIS and base its findings on that EIS? Yes, the State's Freshwater Wetlands Appeals Board ruled in *Group for the South Fork, Inc.* v. *DEC* (decided March 16, 1989). DEC may disagree with the lead agency's findings and issue a permit contrary to those findings, the Board ruled. But it may not base its own findings on in-house material outside the SEQR record and therefore not subject to challenge or public scrutiny.

In *Price v. Common Council of City of Buffalo*, 3 Misc.3d 625, 773 N.Y.S.2d 224 (Sup.Ct. Erie Co. 2004), the court annulled the city common council's approval of a helipad at a hospital after the city's planning board, though it lacked jurisdiction to approve it, declared itself the lead agency under SEQRA. Though there was evidence the helipad's storage of liquid oxygen could lead to an explosion or fire, the planning board issued an unconditioned negative declaration. The council then, aware of the board's negative declaration, approved the project. The court noted that the board's "limited role... in reviewing the site plan and design" of the helipad did not warrant its appointing itself lead agency. It was plainly the council that had "principal responsibility for ...approving" the project (subd. 6). And the council had not taken the required hard look at the safety concerns here, see the Commentary to § 8-0109 at C8-0109:3. The court remanded to the council for it to perform its responsibilities as the true lead agency.

Scenic Hudson, Inc. v. Town of Fishkill Town Bd., 266 A.D.2d 462, 699 N.Y.S.2d 70 (2nd Dept. 1999), leave to appeal denied 94 N.Y.2d 761, 707 N.Y.S.2d 142, 728 N.E.2d 338 (2000), upheld a zoning ordinance restricting mining to industrial areas as against the claim that DEC should have been an involved agency. The Part 617 rules define an involved agency as one having jurisdiction to fund, approve or perform the action. 6 NYCRR § 617.2(u). As the court noted, DEC was none of those in the context of the SEQRA review of the town's rezoning. "The fact that the DEC will, in the future, have to issue a mining permit and perform an environmental review on a site-specific basis," the court added, does not make it an involved agency as to the zoning. In any event, the town had named DEC as an interested agency and the Department thus had ample opportunity to comment on the draft EIS. That's what counts.

An unusual decision mandated the weighing of environmental impacts by a planning board before a town could approve an abortion clinic and particularly a bomb-protective concrete barrier around it, sought by the project sponsor after pickets appeared at the site. *Brighton Residents Against Violence to Children, Inc. v. Town of Brighton*, 191 Misc.2d 261, 739 N.Y.S.2d 803 (Sup.Ct. Monroe Co. 2001), reversed on other grounds, 304 A.D.2d 53, 757 N.Y.S.2d 399 (4th Dept.), leave to appeal denied, 100 N.Y.2d 514, 769 N.Y.S.2d 200, 801 N.E.2d 421 (2003), turned in part on the court's ruling that the facility failed to obtain Planning Board approval as a new use, different from a doctor's office. But the trial court also found the safety concerns raised by possible violence by protesters required the planning board, as lead agency, to determine whether the bomb-proof barrier was appropriate. Instead, the town planner had approved the barrier as well as the facility itself, which the court found was properly the role of the planning board. The Appellate Division reversed, finding the petitioners lacked standing, in a decision discussed in the Commentary to § 8-0109 at C8-0109:6 under Standing.

Does SEQRA require a lead agency to be selected where the EIS is to be prepared by a federal agency under NEPA? DEC has ruled that no lead agency need be designated in that scenario. DEC Declaratory Ruling 8-02 (Buffalo and Fort Erie Public Bridge Authority) (2002) concerned plans to expand the traffic capacity for the Peace Bridge between Buffalo and Fort Erie, Ontario. After the court ruled in *City of Buffalo v. DEC* (see the Commentary to § 8-0109 at C8-0109:3 under Segmentation) that an EIS was required, the various agencies involved regrouped and created a new project that included, as the court demanded, both the new bridge and its expanded toll plaza. Since the project is federally funded, an EIS was prepared under NEPA, as is outlined earlier in this Commentary under NEPA and SEQRA. When that happens, the Department ruled, no lead agency under SEQRA need be named, since the state agencies may fully participate in NEPA's environmental review as involved agencies. As the Department noted, the involved state agencies must then certify that SEQRA's requirements, including mitigation of environmental impacts, have been met. The Department's rules, 6 NYCRR at § 617.11(d)(4), spell this out. The Federal Highway

Administration has been designated the lead agency under NEPA and the EIS process is under way pursuant to the federal statute.

Excluded Actions

Subd. 5 excludes from the EIS requirements of the Act certain actions commenced prior to SEQRA's effective date, power plant and transmission line siting proceedings under the Public Service Law and decisions involving Class A and Class B regional projects under the Adirondack Park Agency Act (Executive Law §§ 800 to 820). These determinations are exempted from the need to prepare an EIS pursuant to § 8-0109(2), not from SEQRA *in toto*. Thus the duty to minimize environmental impact (§ 8-0109[1]) and other responsibilities under the Act still very much apply in these cases.

Two cases of interest deal with the provision that excludes, or grandfathers, with certain exceptions, actions approved before SEQRA became effective. In *Salmon v. Flacke*, 61 N.Y.2d 798, 473 N.Y.S.2d 946, 462 N.E.2d 123 (1984), the Court of Appeals observed that an otherwise grandfathered permit-holder may nevertheless be required to comply with SEQRA where the level of its operations changes substantially after the Act became effective. Thereafter the Appellate Division held the *Salmon* dictum did not bring under SEQRA a preexisting mining operation which, after SEQRA took effect, approached some adjacent properties. *Atlantic Cement Co., Inc. v. Williams*, 129 A.D.2d 84, 516 N.Y.S.2d 523 (3rd Dept. 1987). The court noted that such expansion of activity is consistent with the nature of mining, and did not amount to the sort of significant change in operation which renders SEQRA applicable to otherwise-grandfathered activities.

The dispensation in subd. 5 from the EIS requirements of SEQRA was granted in recognition of the nature of the exempted proceedings under the Public Service Law and Adirondack Park Act provisions. Siting proceedings for major steam electric generating plants (Public Service Law arts. 8 and 10) and major utility transmission lines (Public Service Law art. 7) involve a determination as to the environmental compatibility and public need for the facility. See Public Service Law §§ 121, 141, 168. That decision, made on the basis of evidentiary hearings at which interested state and municipal agencies, environmental and consumer groups and others have ample opportunity to be heard, can only be made after consideration of factors similar to those which the EIS process examines. Even more to the point, the applicant must furnish studies as to the facility's environmental impact and discuss considered alternatives. See Public Service Law §§ 122(1)(c), (e), 142(1)(b) and (e), and 164(1)(b) and (c). But note that Arts. 8 and 10 are no longer in effect.

A federal permit for a hydroelectric plant or other project arguably affecting water quality requires state certification under Clean Water Act § 401 (33 U.S.C.A. § 1341) that the facility will not impair the state's water quality standards. See the Commentary to §§ 17-0701 and 17-0823. Does this provision furnish a basis for SEQRA review? No, ruled the Court of Appeals in *Niagara Mohawk Power Corp. v. New York State Dept. of Environmental Conservation*, 82 N.Y.2d 191, 604 N.Y.S.2d 18, 624 N.E.2d 146 (1993), cert. denied 511 U.S. 1141, 114 S.Ct. 2162, 128 L.Ed.2d 885. The Federal Power Act, under which hydroelectric plants are licensed, preempts the field, despite the state certification mandate of § 401, the court concluded. The Department contended that provision enabled it to deny certification to a hydro plant that violated any of several state statutes relating to stream disturbances, dams, wetlands and the like, as well as SEQRA. But the court held § 401 "gives the State ... only a limited role of review, based on requirements affecting water quality, not on all State water quality provisions ... that would overlap or duplicate the federal purview ... "

This portion of the *Niagara* decision is discussed in the Commentary to §§ 15-0501 and 17-0823. Important for our purposes here is the court's clear rejection of SEQRA as one of the state laws DEC might consider in deciding whether to certify a federally-licensed project under § 401. A hydro plant might be expected to undergo review and require an EIS under the National Environmental Policy Act. But whether or not the federal agency prepares an EIS,

Niagara holds § 401 is a limited exception to the "essentially pre-emptive Federal control" envisioned by the Federal Power Act. Interestingly, though not mentioned by the court, hydro plants were made subject to state review as to need and siting under Public Service Law article 10, as amended in 1992. Subd. 5(b) of this section excludes those determinations from the EIS requirements of SEQRA -- though, it might be argued, not from the parts of the Act mandating that agencies mitigate environmental damage. However, the DEC Part 617 rules implementing SEQRA (§ 617.5[c][35]) classify Public Service Law power plant siting decisions as Type II and thus excluded from SEQRA review entirely. The regulation is not symmetrical with the statute.

The United States Supreme Court, in *P.U.D. No. 1 of Jefferson County v. Washington Dept. of Ecology*, 511 U.S. 700, 114 S.Ct. 1900, 128 L.Ed.2d 716 (1994), adopted a broader reading of § 401, holding it authorizes a state to deny certification to a hydro plant interfering with water quantity (as opposed to water quality). The impact of *Jefferson County* on *Niagara* is dealt with in the Commentary to § 17-0823. But even the broadest reading of the Supreme Court's decision would scarcely support DEC's contention that § 401 triggers SEQRA review. Washington, which has an act similar to SEQRA, seems not to have ventured such an argument.

More recently the issue of Federal Power Act preemption of SEQRA review arose in the context of a natural gas storage facility to be located in caverns underground. A citizen group challenged permits issued under the federal Natural Gas Act, objecting that there had been no SEQRA compliance. In *Concerned Citizens of Cohocton Valley, Inc. v. Town of Avoca Planning Bd.*, 919 F.Supp. 643 (W.D.N.Y. 1996), affirmed, 127 F.3d 201 (2d Cir. 1997), however, the federal court held it had no jurisdiction since the preemption claim was raised as a defense and not as part of the plaintiffs' challenge. Had the issue arisen in the state courts the court would likely have ruled, as in *Niagara*, that SEQRA was inapplicable to this federally-licensed project.

Thereafter, in *Avoca Natural Gas Storage v. Concerned Citizens of Cohocton Valley, Inc.*, 939 F.Supp. 223 (W.D.N.Y. 1996), affirmed, 127 F.3d 201 (2d Cir. 1997), the applicant for the permit sought a declaratory judgment exempting its action from SEQRA, and an injunction against the defendant suing the applicant in the state courts under the Act. Yet the court again dismissed the suit, holding it was without jurisdiction to enjoin a private defendant from suing the plaintiff in a state tribunal. It cited cases holding "jurisdiction over actions for declarations of pre-emption can logically only be asserted where a state official is the defendant" -- not, as here, a private litigant.

That seems to be a distinction without a difference. The sole Second Circuit decision so stating, *Albradco, Inc. v. Bevona*, 982 F.2d 82 (2d Cir. 1992), was dicta, since that court had already ruled the plaintiffs not proper parties as enumerated in ERISA. Perhaps the court will some fine day reach the merits in *Avoca*, and hold, as it then should, that SEQRA has no role in a federal permit application unless substantive state (or local) decision-making is also required.

Since power plants certified under Public Service Law art. 10 are expressly excluded from SEQRA review under subd. 5(b) of this section, the Department ruled in *In re Consolidated Edison Co. of N.Y., Inc.* (Aug. 16, 2001), that Con Ed's applications for clean air permits for a new plant in Manhattan require no EIS. As noted, they're already subject to the thorough environmental review contemplated by article 10, which requires applicants to obtain a certificate of environmental compatibility from the state's power plant siting board. The Commissioner distinguished the *Uprose* decision (described in the Commentary to § 8-0109 at C8-0109:3, Electric Power Plants), requiring an EIS for new power plants that were below the threshold size of article 10.

This section's exemption for certain Adirondack Park Agency decisions (subd. 5) is based on the Adirondack Park Agency Act's mandate for environmental review by the Agency of local land-use programs and Class A and Class B regional projects over a threshold size. But in the first reported case dealing with the Adirondack Park Agency's exemption, *County of Franklin* v. *Connelie*, 68 A.D.2d 1000, 415 N.Y.S.2d 110 (3rd Dept. 1979), Adirondack Park Agency approval of a state agency project (constructing a State Police building) under Executive Law § 814 was

held to be exempt from SEQRA's EIS provisions. In fact § 8-0111 is quite specific, and excludes only actions under Executive Law §§ 807 to 809 -- not the sort of action involved in *County of Franklin*.

As noted earlier, this section exempts Adirondack Park Agency land-use review determinations from the need to prepare an EIS, but not from SEQRA in its entirely. The Appellate Division reaffirmed this in *Friedman v. Adirondack Park Agency*, 165 A.D.2d 33, 565 N.Y.S.2d 607 (3rd Dept.), leave to appeal denied 78 N.Y.2d 853, 573 N.Y.S.2d 467, 577 N.E.2d 1059 (1991). The Agency there conditioned a permit to develop a tract on the developer limiting the number of lots and installing individual raised fill sewage systems. It based its concern on the cumulative impact of this and other past and possible future subdivisions on both groundwater and a nearby brook. The Appellate Division upheld the Agency's weighing of the cumulative impact of this and other projects even though Adirondack Park Agency land-use review decisions are exempt from the need to prepare EISs.

Notes of Decisions (60)

Footnotes

1 42 USCA § 4321 et seq.

2 Article effective Sept. 1, 1976.

McKinney's E. C. L. § 8-0111, NY ENVIR CONSER § 8-0111

Current through L.2014, chapters 1 to 430.

End of Document

McKinney's Consolidated Laws of New York Annotated
Eminent Domain Procedure Law (Refs & Annos)
Chapter 73. Of the Consolidated Laws
Article 1. Purpose; Short Title; Definitions; Applicability

McKinney's EDPL § 101

§ 101. Purpose

Currentness

It is the purpose of this law to provide the exclusive procedure by which property shall be acquired by exercise of the power of eminent domain in New York state; to assure that just compensation shall be paid to those persons whose property rights are acquired by the exercise of the power of eminent domain; to establish opportunity for public participation in the planning of public projects necessitating the exercise of eminent domain; to give due regard to the need to acquire property for public use as well as the legitimate interests of private property owners, local communities and the quality of the environment, and to that end to promote and facilitate recognition and careful consideration of those interests; to encourage settlement of claims for just compensation and expedite payments to property owners; to establish rules to reduce litigation, and to ensure equal treatment to all property owners.

Credits
(L.1977, c. 839, § 1.)

Notes of Decisions (350)

McKinney's E. D. P. L. § 101, NY EM DOM PROC § 101
Current through L.2014, chapters 1 to 430.

End of Document